SUPREME COURT OF THE UNITED STATES.

No. 114.

THE UNITED STATES, APPELLANTS,

vs.

ANASTASIO CARRILLO.

APPEAL FROM THE DISTRICT COURT U. S. FOR THE SOUTHERN DISTRICT OF CALIFORNIA.

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GIBSON, print.

Transcript of the proceedings in case No. 327—Anastasio Carrillo, claimant, vs. *The United States, defendant—for the place named "Punta de la Concepcion."*

OFFICE OF THE BOARD OF COMMISSIONERS

To ascertain and settle the private land claims in the State of Cal'a.

Be it remembered, that on this seventh day of September, Anno Domini one thousand eight hundred and fifty-two, before the commissioners to ascertain and settle the private land claims in the State of California, sitting as a board in the city of San Francisco, in the State aforesaid, in the United States of America, the following proceedings were had, to wit:

The petition of Anastasio Carrillo, for the place named "Punta de la Concepcion," was presented, and ordered to be filed and docketed with No. 327, and is as follows, to wit:

(Vide page 3 of this Transcript.)

Upon which petition the following subsequent proceedings were had in their chronological order, to wit:

LOS ANGELES, *Sept. 9th*, 1852.

In case No. 327, Anastasio Carrillo, for the place named "Punta de la Concepcion," the deposition of Pablo de la Guerra, a witness in behalf of the claimant, taken before Commissioner Harry J. Thornton, was filed.

(Vide page 4 of this Transcript.)

SAN FRANCISCO, *Jan'y 15th*, 1853.

In the same case the deposition of N. A. Den, a witness in behalf of the claimant, taken before Commissioner Harry J. Thornton, was filed.

(Vide page 5 of this Transcript.)

SAN FRANCISCO, *August 15th*, 1853.

Case No. 327 called. The counsel for the claimant read the evidence—argued, submitted, and taken under advisement.

SAN FRANCISCO, *Feb'y 14th*, 1854.

In the same case Commissioner Thompson Campbell delivered the opinion of the majority of the board rejecting the claim.

(Vide page 21 of this Transcript.)

In the same case Commissioner R. Aug. Thompson delivered his dissenting opinion.

(Vide page 24 of this Transcript.)

Petition.

To the honorable Commissioners to settle private land claims in California.

The petitioner, Anastasio Carrillo, respectfully represents:

That on the 10th day of May, A. D. 1837, Juan B. Alvarado, governor of California, by virtue of authority in him vested, granted to the petitioner the tract of land called Punta de la Concepcion, in the present county of Santa Barbara, as described in the title and map, which grant was approved by the deputation on the 18th day of May, A. D. 1837, and the juridical possession given in due form in the month of May, A. D. 1839; all of which is shown by the original title, map, and act of possession, which are herewith submitted, marked A, with translations marked B.

That the petitioner has been for more than fifteen years, and now is, in the quiet and undisputed possession and occupation of the said tract of land.

That he knows of no conflicting claim.

That he relies for confirmation of title upon the original papers, which are submitted herewith, upon the records and minutes in the archives of the former government of California, and upon such other and further proofs as he may be advised are necessary.

Wherefore he prays the commissioners to confirm to him the aforesaid tract of land.

HALLECK, PEACHY & BILLINGS,
Att'ys for Claimant.

Filed in office Sept. 7th, 1852.

GEO. FISHER, *Sec'y.*

Deposition of Pablo de la Guerra.

OFFICE OF CALIFORNIA LAND COMMISSION,
LOS ANGELES, *Sept. 9th*, 1852.

On this day, before Harry J. Thornton, one of the commissioners for ascertaining and settling private land claims in California, came Pablo de la Guerra, a witness produced in behalf of the claimant, Anastasio Carrillo, whose petition is No. 327 on the docket of the board, and was duly sworn, his evidence being given in English.

The U. S. law agent attended.

1st question. What is your name, age, and place of residence?

Answer. My name is Pablo de la Guerra; my age is about 32 years; I reside in Santa Barbara, and have resided in California all my life.

2nd question. Examine the documents marked A, and attached to this petition in this case, and say if you know the signatures?

Ans. I am acquainted with the signatures of Juan B. Alvarado, Victor Prudhon, Manuel Jimeno, Vicente Moraga, Anastasio Carrillo, and Antonio Rodrigues; their signatures to these documents are gen-

uine, and the documents themselves are, to the best of my belief, genuine.

PABLO DE LA GUERRA.

U. S. law agent present.

Sworn to and subscribed before me, this 9th of Sept., 1852.

HARRY J. THORNTON, *Comm'r, &c.*

Filed in office Sept. 9th, 1852.

GEO. FISHER, *Sec'y.*

Deposition of N. A. Den.

SAN FRANCISCO, *Jan'y 15th*, 1853.

On this day, before Com. Harry J. Thornton, came N. A. Den, a witness in behalf of the claimant, Anastasio Carrillo, petition No. 327, and was duly sworn, his evidence being given in English.

My name is Nicolas A. Den; my age is 40 years; I reside in Santa Barbara, and have lived in California 16 years. I know the rancho called Punta de la Concepcion, in Santa Barbara county; I remember that it was occupied by Anastasio Carrillo in 1838, or about that time; he had cattle and horses, and a small house for his *vaqueros* on it, he has occupied it ever since. He, at one time, has had about 2,000 or 1,500 head of cattle and a large number of horses on it.

N. A. DEN.

U. S. law agent present.

Sworn to and subscribed before me, this 15th of Jan'y, 1853.

HARRY J. THORNTON,
Comm'r, &c.

Filed in office, Jan'y 15th, 1853.

GEO. FISHER, *Sec'y.*

Document "A"—Ann'd to the deposition of Pablo de la Guerra.

El Ciudadano Juan Bautista Alvarado, Gobernador del Estado y Presidente de la Exelentisima Diputacion del mismo:

Por cuante el Ciudadano Anastasio Carrillo ha pretendido para su beneficio personal y el de su familia el terreno conocido con el nombre de la Punta de la Concepcion, dentro de los linderos del diseño que acompaño a su solicitud; practicadas previamente las diligencias concernientes segun lo dispuesto por las leyes y reglamento de la materia; usando de las facultades que me son conferidas á nombre de la Nacion Mejicana, he venido en concederle el terreno mencionado, declarandole la propiedad de el por las presentes letras entiendose dicha concesion con entera conformidad á las leyes a reserva de la aprobacion ó desaprobacion de la ex'ma diputacion y bajo los condiciones siguientes:

1a. El agraciodo ni sus herederos podran dividir, ni enagenar el que se le adjudica; imponerle censo, vinculo, fianza hipoteca, ni otro gravamen aunque sea por causa piodosa, ni pasarlo á manos muertas.

2a. Podra sercarlo sin perjudicar las travecias, caminos, y servidumbres, lo disfrutará libre y esclusivamente, dedicandolo al cultivo y usos que le acomode.

3a. Cuando se le conceda la propriedad solicitara del juez respectivo le de la posesion juridica en virtud de este despacho, por el cual se demarcaran sus linderos, y pondrá sus mohoneras.

4a. El terreno de que se hace donacion espuramente el que se expresa en la solicitud del interesado y se demarca en el diseño; y el juez que lo posesione, pasara aviso á este gobierno del numero de sitios que comprende.

En consecuencia mando que serviendole de titulo el presente y teniendose por forme y valedero se tome razon en el libro que corresponda y se entregue al interesado para su resguardo y demas fines convenientes.

Dado en la ex-Mision de S'ta Barbara, á 10 de Mayo, de 1837.

JUAN B. ALVARADO,
VICTOR PRUDHON,
S'cro Int'o.

S'TA BARBARA, *Mayo* 18, *de* 1837.

En sesion de este dia aprobó la ex'ma diputacion erigida en congreso constituyente el dictamen de la comision del mismo cuyo tenor es el siguiente, se concede al C'o Anastacio Carrillo el parage nombrado Punta de la Concepcion, pr. obtener los requisitos ql. previene la ley de 18 de Agosto, de 1824, y el art'o 5 del reglamento de 21 de Nov'bre, de 1828.

S'ta Barbara, 14 de Mayo, de 1837.

JUAN B. ALVARADO.
VICTOR PRUDON,
S'cro Int'o.

JOSE R. ESTRADA.

El interesado agregara tarjado un pliego de á 6 ps. conforme á la ley.

V. PRUDON.

(Here follows a map.)

[*For map see original, page* 8.]

[L. S.] Certifico que el diseño que se demuestra á la vuelta es conforme con el original que aparece en el espediente, que existe en esta secretaria, de mi cargo y para los pues que pueden convenir,

estiendo este en la secretaria de gobierno, en Monterey, á veinte y siete de Abril, de mil ochocientos treinta y nueve.

MANUEL JIMENO.

S'or Jues de Paz Interino:

El ciud'o Anastacio Carrillo, avecindado en esta municipalidad, ante V. como mejor haya lugar en derecho y al suyo convenga se presenta y dice; que habiendo solicitado del gobierno del departamento la adjudicacion del terreno que expresa el diseño adjunto, se le concedio por d'ho gobierno con fha. 10 de Mayo, de 1837, y se aprobó pr. la Ex'ma Diputacion en 18 del mismo mes y año, como lo acredita el titulo devidamente acompaña. En tal virtud, y en la de ser requisito de ley q'l pa. mayor seguridad del interesado en asunto de esta naturaleza, solicite del jues respectivo la posesion juridica la impetro á la presente el que subscribe de la autoridad q'l V. representa. Por tanto.

A V. suplica se sirva tener la bondad de pasar á darle la referida posecion del mencionado parage en lo que recibira gracia y justicia, serviendose admitio este en papel comun por no haber del sello que corresponde; jurando no ser de malicia y lo necesario, &c.

ANAST'O CARRILLO.

Sta. Barbara, Mayo 23, de 1839.

(The following order was written on the margin of the above petition:)

SANTA BARBARA, *y Mayo* 23, *de* 1839.

En virtud de la presente solicitud q'l hace el interesado ha dispuesto este juzgado de mi cargo proceder á la posecion juridica el lunes proximo, 27 del corte.

ANTONIO RODRIGUES.
VICENTE MORAGA, *Scr'o.*

En el Presidio de Santa Barbara, á los veinte y tres dias del mes de Mayo, del año de mil ochocientos treinta y nueva anuente á la solicitud de Dn. Anastacio Carrillo, á fin de que se le de la correspondiente posesion del sitio llamado la Punta de Concepcion, concedido por el gobierno de este departamento, y habiendo la falta de un agrimensor que para efecto de las medidas correspondientes devia comparecer para que remida el enunciado terreno; lo hice yo el primeo nombrado Juez de Paz interino, ciudadano Antonio Rodriguez, con total arreglo á las primeras medidas que se han practicado, cuyo disçño se agregara al espediente pasese por mi y los testigos de asistencia al espresado sitio y prosedase á dar la posesion indicada, arreglandose al titulo que se le ha conferido por la gefatura politica con fha. diez de Mayo, de mil ochocientos treinta y siete. Yo el expresado juez de este punto, asi lo decreté, mandé y firmé, con los testigos de mi asistencia, doy fée.

ANTONIO RODRIGUEZ.

Ast'a: VICENTE MORAGA,
Asc'a: ANTONIO DOMINGUES.

En el rancho nombrado la Punta de Concepcion á veinte y cuatro de Mayo, de mil ochocientos treinta y nueve, el juez, que subscribe habiendo hecho citacion de colindantes, comparecieron estos, que fueron los ciudadanos Francisco de la Guerra por el rancho de San Julian, José Ortega por el de Refugio, José Maria Valenzuela por el establecimiento de la Purisima, y José Antonio Domingues por Sal-si-Puedes; les hice saber el objeto con que me habia conducido a aquel parage y que en este caso presentaren los documentos que respectivamente tubieron sobre propiedad de aquel terreno, pues hiba á remederlo y poner en posesion de el á Dn. Anastacio Carrillo; y no habiendo presentado documentos ningunos que impidieron las medidas, les dijo que hiba á proceder á ellas; lo que pongo por diligencia, y autoriso y firmo con los de asistencia, segun derecho.

ANTONIO RODRIGUEZ.

Asc'a: VICENTE MORAGA,
Asc'a: ANTONIO DOMINGUES.

En el referido lugar á los veinte y cinco dias del mismo mes y año, yo el proprio juez para la practica de estas diligencias nombre dos oficiales medidores y dos cordeleros, á quienes les hice saber su nombramiento el que aceptaron bajo de juramento que otorgaron, ofreciendo disempenar fielmente su encargo lo que autoriso y firmo con los testigos de mi asistencia, segun derecho.

ANTONIO RODRIGUEZ.

Asc'a: VICENTE MORAGA,
Asc'a: ANTONIO DOMINGUES.

En el mismo dia mes y año estando en el parage nombrado el cojo viego, cuyo colinda al sur con el Rancho del Refugio, al norte con el Rancho de San Julian, y el establecimiento de la Purisima, y al noroeste con el parage nombrado la Punta de Pedernales, cuyo colinda al referido establecimiento a efecto de verificar las remididas y posesion que corresponde al S'or Dn. Anastacio Carrillo, del sitio nombrado la Punta de Conception, previos todos los requisitos de ley y estando ante mi, los testigos de asistencia, los oficiales medidores, los cordeleros, y yo el jues ciudadano Antonio Rodrigues hice medir un cordel que contenia cincuenta varas, el cual fue examinado y reconocido, y aciendo á sus estremos unos sancos de madera, y por mi disposicion se tiró el cordel rumbo al norte, comenzando desde la orilla del mar, en cuyo lugar se clavo un palo en Señal de Mohonera, y habiendo medido tres cuartos de legua, remato en lo alto de la sierra hasta unos encinos altos que son los mas recibles en el citado parage, cuyos servieron de mohonera; y siendo una hora importuna yo el juez suscripto en estas diligencias dispuse se suspendresen las medidas para continuarlas el dia de manána y lo firmé con los de asistencia, segun derecho.

ANTONIO RODRIGUES.

Asc'a: VICENTE MORAGA,
Asc'a: ANT'O DOMINGUES.

En veinte y seis del mismo mes y año espresado yo el citado juez, habiendo pasado en compania de los medidores y cordeleros igualmente los colindantes respectivos al sitio donde el dia anterior se remotó la medida, y en prosecucion de las presentes diligencias dispuse continuarlas desde este lugar rumbo al noroeste, tirando la cuerda por sobre una cuchillo nombrada la De Jalama—cuya sirve para division del sitio que actualmente se mide, y el de San Julian habiendo rematado la dimension hasta el parage nombrado Punta de Padernales, cuya medida se comprendio de cinco leguas de longitud y habiendo puerto en este parage mi palo clavado en señal de mohonera se concluyeron las medidas de este sitio á satisfaccion del interesado; lo que pongo por diligencia que autorizo y firmo con los testigos judicados.

ANTONIO RODRIGUES.

Asc'a: VICENTE MORAGA,
Asc'a: ANTONIO DOMINGUES.

Antonio Rodrigues, Juez de Paz int'o del Presidio de Sta. Barbara:

Certifico q'l la antecedente copia es sacada fielmente á la letra de su original cuya obra en el archivo de este juzg'do de mi cargo.

ANTONIO RODRIGUES.
VICENTE MORAGA, *S'cro.*

Filed in office, Sept'r 9th, 1852.

GEO. FISHER, *Sec'y.*

Translation of Title and Possession.

Citizen Juan Bautista Alvarado, governor of the State and president of the most excellent deputation of the same:

Whereas, citizen Anastasio Carrillo has, for his own personal benefit and that of his family, asked for the land known by the name of Punta de la Concepcion, within the boundaries of the map which accompanied his petition; the proper steps being previously taken as required by laws and regulation in the matter, using the powers which are conferred on me in the name of the Mexican nation, I have granted him the aforesaid lands, declaring to him the ownership of it by the present letters; said grant being understood to be in entire conformity with the laws, subject to the approval or disapproval of the most excellent deputation, and under the following conditions, viz.:

1st. Neither the grantee nor his heirs can divide or alienate that which is granted to them, subject it to any tax, entail, pledge, mortgage, or other encumbrance, even for pious purposes, or convey it in mortmain.

2d. He may enclose it without prejudice to the crossings, roads, and servitudes, and enjoy it freely and exclusively, making such cultivation and uses of it as he may see fit.

3d. When the ownership is granted to him, he shall request the proper magistrate to give him the juridical possession in virtue of this title, by whom its boundaries will be marked out, and its bounds placed.

4th. The land of which donation is made, is solely that described in the petition of the person interested and marked out in the map, and the magistrate who may give the possession will inform this government of the number of square leagues it contains.

In consequence I order that these presents serving him for a title, and being held as firm and valid, note be made of them in the corresponding book, and they be delivered to the person interested for his security and other convenient purposes.

Given in the ex-mission of Santa Barbara, on the 10th of May, 1837.

(Signed) JUAN B. ALVARADO.
(Signed) VICTOR PRUDON,
Secretary ad interim.

SANTA BARBARA, *May 18th*, 1837.

In session of this day, the most excellent deputation, elevated into a constituent Congress, approved the report of the committee of the same, the tenor of which is as follows:

There is granted to citizen Anastasio Carrillo the place named Punta de la Concepcion, as he possesses the requisites required by the law of August 18th, 1824, and article 5th of the regulation of November 21st, 1828.

Santa Barbara, May 14th, 1837.

(Signed) JOSE R. ESTRADA,
(") FRANCISCO J. ALVARADO,
(") JUAN B. ALVARADO.
(Signed) VICTOR PRUDON,
Secretary ad interim.

The person interested will attach a sheet of the value of $6, as required by law.

(Signed) V'R PRUDON.

SANTA BARBARA, *May 23d*, 1837.

In virtue of the present petition which the person interested makes, this court in my charge has ordered to procure of the juridical possession, Monday next, the 27th instant.

(Signed) ANTONIO RODRIGUES.
(Signed) VICENTE MORAGA,
Secretary.

To the Justice of the Peace ad interim:

Citizen Anastasio Carrillo, settled in this municipality, before you as he best may in law, and as may be most favorable for him, appears and says, that having solicited of the departmental government the grant of the land shown in the annexed map, it was granted to him by said government, with date May 10th, 1837, and approved by the most excellent deputation on the 18th of the same month and year, as shown

by the title which he duly transmits, per virtue of this, and of the fact that it is required by law that for the greater security of the person interested in matters of this nature, he should request of the respective magistrate the juridical possession; he who subscribes now asks it of the authority which you represent. Wherefore, he prays you to have the goodness to go and give the aforesaid possession of the place referred to, in which he will receive grace and justice, being pleased to admit this on common paper for want of that of the corresponding stamp, swearing that this is not done with evil intent, and whatever else may be necessary, &c.

Santa Barbara, May 23d, 1839.

(Signed) ANASTASIO CARRILLO.

In the presidio of Santa Barbara, on the 23d day of the month of May, of the year one thousand eight hundred and thirty-nine, in compliance with the request of Don Anastasio Carrillo, that the corresponding possession should be given him of the place called La Punta de Concepcion, granted by the government of this department, and there being no surveyor, who ought to appear for the purpose of the corresponding surveys, to re-measure the aforesaid land: I, the first-named justice of the peace ad interim, citizen Antonio Rodriguez, did in entire conformity with the first measurements which have been made, the map of which will be attached to the espediente; I, and the assisting witnesses, will go to the aforesaid place, and proceed to give the indicated possession, conforming to the title given by the government, dated May 10th, 1837.

I, the aforesaid magistrate of this point, thus decreed, ordered, and signed, with the witnesses of my assistance, I certify.

(Signed) ANTONIO RODRIGUES.

Assisting witnesses:

VICENTE MORAGA,

ANTONIO DOMINGUEZ.

In the rancho named La Punta de Concepcion, on the 24th of May, eighteen hundred and thirty-nine, the magistrate who subscribes having summoned the colindantes, they appeared, and were citizens Francisco de la Guerra, for the rancho of San Julian; José Ortega, for that of El Refugio; José M'a Valenzuela, for the establishment of La Purisima; and José Antonio Dominguez, for Sal si Puedes; I made known to them the object which had brought me to that place, and this in this case they should present the averments which they might have respectively relative to the ownership of that land, for I was going to remeasure it, and put in possession of it Don Anastasio Carrillo, and they not having presented any documents which could hinder the measurements, I said that I was going to proceed to them; all of which I re-

cord and I authenticate, and sign it with those of assistance, according to law.

(Signed) ANTONIO RODRIGUEZ.

Assisting witnesses:
VICENTE MORAGA,
ANTONIO DOMINGUEZ.

In the aforesaid place, on the twenty-fifth day of the same month and year, I, the proper magistrate for the execution of these acts, appointed two surveyors and two rope-bearers, whom I informed of their appointment, which they accepted under the oath which they took, promising to discharge faithfully their office; all which I authenticate and sign with the witnesses of my assistance, according to law.

(Signed) ANTONIO RODRIGUEZ.

Asst'g witnesses:
VICENTE MORAGA,
ANTONIO DOMINGUEZ.

On the same day, month, and year, being in the place named El Cojo Viego, which is bounded on the south by the rancho of El Refugio, north by the rancho of San Julian and the establishment of La Purisima, and northwest by the place named La Punta de Padernales, which adjoins the said establishment, for the purpose of verifying the re-measurements and possession which correspond to Don Anastasio Carrillo, of the place called La Punta de Concepcion; all the requirements of the law being previously complied with, and being before me, the assisting witnesses, the surveyors, the rope-bearers, and I, the magistrate citizen Antonio Rodriguez, *I* caused to be measured a rope which contained fifty varas, which was examined and recognised, and some stakes of wood tied to its extremities, and by my direction the cordel was drawn north, commencing at the sea-shore, in which place a stake was driven as a bound, and having measured three-quarters of a league, it ended in the high part of the Sierra, where some high oak trees, those which are most visible in the said place, which served as a bound; and the hour being an improper one, I, the magistrate, subscribing these records, directed that the measurements be suspended, to be continued to-morrow; and I signed with those of assistance, according to law.

ANTONIO RODRIGUEZ.

Assisting witnesses:
VICENTE MORAGA,
ANTO. DOMINGUEZ.

On the twenty-sixth of the same month and year aforesaid, the said magistrate having passed in company with the surveyors and rope-bearers, and also the respective colindantes, to the place where on the previous day the measurement ended, and in prosecution of the present acts, I ordered them to be continued from that place northwest, drawing

the cordel along over a ridge named that of Jalama, which serves to divide the place at present, being measured from that of San Julian. The measurement reaching to the place named Punta de *Pedinidles*, which measurement was five leagues in length, and having placed a stake driven in at this place as a bound, the measurements of this sitio were concluded to the satisfaction of the party interested; all of which I make record, which I authenticate and sign with the witnesses referred to.

ANTONIO RODRIGUEZ.

Assisting witnesses:
VICENTE MORAGA,
ANTONIO DOMINGUEZ.

Antonio Rodriguez, justice of the peace ad interim of the presidio of Santa Barbara: I certify, that the foregoing copy is faithfully taken to the letter of its original, which exists in the archives of this juzgado in my charge.

(Signed) ANTONIO RODRIGUEZ,
(Signed) VICENTE MORAGA, *Secretary*.

Filed in office, Sept. 7th, 1852.

GEO. FISHER, *Sec'y*.

Opinion of the majority of the Board, delivered by Thompson Campbell.

ANASTASIO CARRILLO vs. THE UNITED STATES. } Punta de la Concepcion.

The claimant in this case, in support of his claim for confirmation, has placed on file, first, the original grant made to him by Governor Alvarado, bearing date the 10th day of May, A. D. 1837; secondly, the record of approval, made by the deputation on the 18th day of May, A. D. 1837; thirdly, the record of juridical possession, given in the month of May, 1839. The foregoing documents are all satisfactorily proved to be genuine.

In regard to the question of settlement upon, and improvements of, the land granted, the party has placed on file the deposition of N. A. Den, who testifies as follows: "I know the rancho called 'Punta de la Concepcion,' in Santa Barbara county; I remember that it was occupied by Anastasio Carrillo, in 1838, or about that time; he had cattle and horses, and a small house for his vaqueros on it; he has occupied it ever since; he at one time has had about 2,000, or 1,500 head of cattle and a large number of horses on it.

This deposition contains all the testimony adduced by the party in regard to the inhabitancy of the land by the grantees.

The only question in this case about which there is any difficulty is, the sufficiency of the evidence upon which the party relies to establish a performance of the conditions which the case attaches to every grant.

In the case under consideration, the grant does not contain the usual condition of building a house within a year and that it must be inhabited, but this commission has decided, that the condition of inhabitancy or cultivation is a condition imposed by the law, and that it is implied in every grant issued under the law of 1824, and the regulations of 1828, whether expressed or not.

The evidence is exceedingly vague and indefinite. The witness testifies that about the year 1838, the grantee had cattle and horses and a small house for his vaqueros on the land; there is no pretence that the grantee inhabited this small house, or that he ever at any time lived upon the land. If the grantee did actually reside on the land, that fact was susceptible of proof, and it should have been shown in language about which there would be no ambiguity, but this he has not done. The evidence shows nothing more than the law allowed the party to do, before the grant was made; he could have occupied the land in the same way with his cattle, and the privilege of building a house for his vaqueros; but the Colonization laws required something more. An actual residence of the party upon the land, in all cases where the grant was sought for grazing purposes alone, was indispensable, and such has been the uniform construction of the law, by this board of commissioners, as at present constituted.

The time when the kind of occupation which the party describes began is uncertain and indefinite, but time in this case is not the material point; it is the fact of actual personal inhabitancy, which the party has failed to establish, and which is the material question. The proof, I think, is evasive, and leaves the irresistible inference to be drawn that the grantee never did inhabit the land in question.

For this reason his claim for confirmation must be denied.

Filed in office, Feb'y 14th, 1854.

GEO. FISHER, *Sec'y.*

Decree.

ANASTASIO CARRILLO
vs.
THE UNITED STATES.

In this case, on hearing the proofs and allegations, it is adjudged by the commission that the claim in this case is not valid, and his application for a confirmation thereof is therefore denied.

ALPHEUS FELCH,
THOMPSON CAMPBELL,
R. AUG. THOMPSON,
Commissioners.

Filed in office, Feb'y 14th, 1854.

GEO. FISHER, *Sec'y.*

Dissenting Opinion delivered by R. Aug. Thompson, Com'r.

ANASTASIO CARRILLO vs. THE UNITED STATES. } Case No. 327. Punta de la Concepcion.

The principle laid down by the majority of the board in their opinion rejecting the claim now under consideration, that "an actual residence or personal inhabitancy of the grantee of the land granted was indispensable to give validity to the grant in all cases when the land was sought for grazing purposes," has been incidentally asserted in three opinions delivered by them. Some of those opinions were delivered while I was necessarily absent from their deliberations, and in others when I was present. There are other points in the cases which led me to concur generally in the result to which they had arrived, without considering myself at all committed either to the principles announced, or the particular process of reasoning by which that result was obtained. I did not consider it necessary to express at the time my dissent from this particular proposition. There has been no period, however, since I became a member of the board, when I would have given the sanction of my judgment to the views of the majority on this question; indeed it was one of the points which I had in my mind when I expressed my dissent to some of the principles asserted in the first opinion delivered by the commission. The present claim having been rejected upon that distinct and single ground, I avail myself of the occasion to present some of the reasons for the opinion to which I have arrived in relation to it.

With the first proposition laid down by the majority in their opinion in this case, to wit, that inhabitancy or cultivation is a condition imposed by the law and implied in every grant issued under the law of 1824, and the regulations of 1828, I do not materially differ. It is, I think, very clearly to be derived from the 1st article of the regulations referred to, which authorize the political chief of the territories to grant vacant lands in conformity to the law of the 18th of August, 1824, to those who solicited them for the purpose of cultivation or habitation, or, as it may be more correctly translated, with the object of cultivating or inhabiting, (con el objecto de cultivarlos ó habitarlos,) the infinitive being, I believe, invariably used in the Spanish after the preposition "de," where the present participle occurs in English after "of." I differ with them, however, as to the true intent and meaning of this implied condition, and the nature and character of the inhabitancy which it requires.

I dissent, therefore, from the opinion of the majority of this commission, because I do not consider the word "habitar," as it occurs in the first article of the regulations of 1828, to mean necessarily actual inhabitancy or personal residence by the party soliciting the grant, but as used in a more enlarged sense, and means such a habitation as may be performed either by the party himself, or by another acting under his authority.

In the case under consideration, the grant does not contain the usual condition of building a house within a year and that it must be inhabited, but this commission has decided, that the condition of inhabitancy or cultivation is a condition imposed by the law, and that it is implied in every grant issued under the law of 1824, and the regulations of 1828, whether expressed or not.

The evidence is exceedingly vague and indefinite. The witness testifies that about the year 1838, the grantee had cattle and horses and a small house for his vaqueros on the land; there is no pretence that the grantee inhabited this small house, or that he ever at any time lived upon the land. If the grantee did actually reside on the land, that fact was susceptible of proof, and it should have been shown in language about which there would be no ambiguity, but this he has not done. The evidence shows nothing more than the law allowed the party to do, before the grant was made; he could have occupied the land in the same way with his cattle, and the privilege of building a house for his vaqueros; but the Colonization laws required something more. An actual residence of the party upon the land, in all cases where the grant was sought for grazing purposes alone, was indispensable, and such has been the uniform construction of the law, by this board of commissioners, as at present constituted.

The time when the kind of occupation which the party describes began is uncertain and indefinite, but time in this case is not the material point; it is the fact of actual personal inhabitancy, which the party has failed to establish, and which is the material question. The proof, I think, is evasive, and leaves the irresistible inference to be drawn that the grantee never did inhabit the land in question.

For this reason his claim for confirmation must be denied.

Filed in office, Feb'y 14th, 1854.

GEO. FISHER, *Sec'y*.

Decree.

ANASTASIO CARRILLO }
vs.
THE UNITED STATES. }

In this case, on hearing the proofs and allegations, it is adjudged by the commission that the claim in this case is not valid, and his application for a confirmation thereof is therefore denied.

ALPHEUS FELCH,
THOMPSON CAMPBELL,
R. AUG. THOMPSON,
Commissioners.

Filed in office, Feb'y 14th, 1854.

GEO. FISHER, *Sec'y*.

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The Spanish word "habitacion," which is translated habitation, has both in the Spanish and Mexican law, as well as in the civil law, on which they are founded, a legal and technical meaning unknown to the common law. It is defined in the civil law to be "a right to dwell in a house," and he who has this right has at his will an use or usufruct, according as his title extends or limits the right of inhabiting. Domat's Civil Law, title 2d, sec. 2, p. 7.

Again, in paragraph 10 of the same section he says: He who has a right of habitation in a house may assign over or let out his right to another without dwelling in the house himself. Escriche, p. 745, edition 1851, defines it to be a right to dwell in the house with his family, or to rent or hire it to persons of good neighborhood or good repute. From these definitions it is apparent that according to the Spanish and Mexican law, "habitacion," or the right of inhabitancy, was not by any means restricted to the actual residence or occupancy of him who possessed it; but its exercise by his tenant or lessee is expressly authorized, and if by them a portion of his agents or servants.

It is certain by no strained construction to suppose, that in framing the regulations of 1828 the Mexican authorities should have used the verb "habitar" with reference to the legal and technical meaning of the word "habitacion," from which it is derived. That they did so I think I shall be able to show, both from the context and other portions of the law having reference to the same subject.

If, then, this construction is correct, the true meaning of that portion of the article would be, that the political chief should grant the lands to those persons who solicited them, with the object of having them cultivated and inhabited; that such is the true intent and meaning of the article I think apparent, from the obvious fact that the word cultivar, which occurs in the same connection, must be taken in this sense, and no other. It will hardly be contended that the grantee was required to cultivate the land granted with his own hands; yet such a construction would be just as reasonable as to require his personal habitation, the words cultivar and habitar being both used in precisely the same sense. It is true that the condition either of cultivation or habitation is implied in the terms of the article; but if the condition could be fulfilled in the former case by the agents and servants of the grantee, (and I presume that will not be questioned,) I can conceive no possible reason why it may not in like manner be done in the latter.

But this construction is still further sustained by a reference to the 11th article of the regulations, where the word occupar is used in the same sense instead of the word habitar. It is true I differ with the majority of the board in their construction of that article; that, and the articles immediately preceding and following it, in my opinion, referring exclusively to grants made to empressarios; but it is not necessary to discuss that difference of opinion here, as the argument is in no degree affected by it. The first article makes no distinction between private individuals or empressarios, and the condition of cultivation or habitation, so far as it is improved or implied by it, applies equally to all

three classes of petitioners. The 11th article provides that the political chief shall appoint to the *sun* settler a proportionate time within which he shall cultivate or occupy (cultivar or occupar) the land, &c. Here the words cultivate or occupy have evident reference to the object for which the land might be granted, as provided for in the 1st article of the regulations, and the substitution of the word occupar for the word habitar in that article, shows most clearly that the latter word was used in its more enlarged signification, meaning to inhabit it or occupy generally, and not in that limited and restricted sense which would confine the inhabitancy which it implies to the grantee alone, as contended for by the majority of the board.

From the views already presented, I think I have established the point which I undertook to prove, to wit: That according to the true construction of the language of the ordinance of 1828, no such condition as that contended for by the majority of the board in this case is imposed by it. A reference, however, to the 15th section of the law of the 18th of August, 1824, demonstrates the correctness of the construction I have been urging, and to my view removes every difficulty in question. That section is in the following words—no one by virtue of this law shall acquire the ownership of lands, shall retain them if he reside out of the territory of the republic. A necessary corollary to this section of the law is, that he may retain them if he reside within those territories. If it had been intended to restrict his residence to the lands granted, the law would so have expressed it, and would not have given him, as it does by implication, a privilege of residence co-extensive with the broad limits of the republic, without any forfeiture of his rights.

The ordinance of the 21st of November, 1828, is by the express terms of the law made in accordance with, and in subordination, to the law of August, 1824, and so declared to be in the preamble to the ordinance itself. If therefore the construction which the majority of the board have put upon it is shown to be, as I think it is, in contravention to that law, the condition resulting from it would most clearly be nugatory and void; but it is much more rational to adopt a construction, in my opinion most clearly the correct one, which reconciles both, and is in accordance with that given to it by the authorities to whom its administration was committed, and their uniform practice under it.

If the foregoing views are correct, then the conclusion necessarily follows, that if the government had inserted in a grant solicited for the purpose of pasturage a condition requiring actual residence of the grantee on the land, it would not only be unauthorized by indirect contravention of the law and regulations from which he derived his authority, and consequently void. It must be apparent to any one at all conversant with the land settlers in California, that all the large grants of lands were solicited and granted exclusively for the purpose of pasturage and grazing; indeed, the raising of stock, black cattle, horses, and sheep, appears to have been the only source of revenue and profitable investment and employment known to the inhabitants. The

tillage of the soil was confined almost exclusively to the cultivation of a small quantity of grain and a few vegetables for domestic consumption, and the more southern portions of the country. The culture to a limited extent of the grape and other fruits have we find in nearly all the petitions for grants of land of this description, the object for which it was intended is declared to be for the purpose of raising stock, and in the preliminary investigations by the governor one of the most prominent and important inquiries is, whether the petitioner has cattle sufficient to stock the land, or the means of acquiring them; and upon this and other inquiries relating to the capacity of the party to take, and of the land to be granted, being answered satisfactorily, the grant was always issued according to the decisions of the supreme court; the purpose for which the grant was sought as set forth in the petition, and the grant issued thereupon by the granting officer, constitutes the contract between the government and the grantee, and upon its fulfilment by the latter; the other conditions of the law being complied with, invests him with an indefeasible estate in the land granted, (U. S. vs. Roesdore, 11 Howd., p. 87.) The condition which appears in many of the grants made in California under the colonization law of 1824, and the regulations of 1828, requiring the building of a house and inhabitancy within a year, as well as the condition against alienation which occurs in some of them, has evidently been adopted and retained from the ancient forms of grants made under the regulations of Felipe de Tuve, promulgated in 1811, being couched in almost the identical language there used. A reference to these regulations will show that the condition in question was confined to the grants of solares or house-lots, in pueblos or towns, and did not apply to the suertes, farming-lots, or the larger tracts for grazing, which were authorized to be granted by that ordinance; and I have been unable to find in any subsequent legislation on the subject, either under Spanish or Mexican authority, any thing which requires or authorizes the imposition of such a condition on grants made for "grazing purposes alone." That it was not considered an imperative condition of such a grant, is manifest from the fact that the Mexican authorities in California have omitted or inserted it arbitrarily according to circumstances or their own pleasure.

But the condition itself, where it occurs, does not necessarily imply a personal residence or inhabitancy by the grantee. Its usual form is, that in one year he shall build a house which must be inhabited; inhabited by whom? By the grantee. There is nothing in the language which restricted it to the signification, it may be inhabited by him, or it may be by some other person for him, and yet the condition of the grant would be literally complied with. "Quod facit per assumpsit per se." But to show the utter inconsistency of the view of this question taken by the majority of the board, with the true intent and meaning of the law, I will again refer to the law of August, 1824. The 12th section of that law provides, that eleven square leagues of land may be granted one individual; but there is nothing contained in it, or in the regulations of 1828, requiring it all to be granted to him

in one tract, or at one time, and, by reference to the archives, it will be seen that it was not unfrequently the case, that several tracts were granted to the same individual.

The whole quantity being within the limits prescribed by the law, now it is very apparent that he could not reside on more than one of them, yet, according to the opinion of the majority of, are the others, although clothed with all the forms and sanctions of the law, would be subject to forfeiture, for the non-performance of a condition which, from the nature of the case, was an impossibility. For ought we know to the contrary, the claimant in this identical case may have been living on another tract, in compliance with a condition of inhabitancy contained in the grant at the very time that he built his house and placed his servants and cattle on the one now claimed. The grant in the case now under consideration comes before us sanctioned by all the forms and requirements of the Mexican law, so far as the action of the territorial authorities is concerned. It was issued by the governor on the 10th day of May, 1837; on the 18th of the same month it received the approval of the territorial deputation, and the certificate of the same, signed by the governor and secretary, was delivered to the grantee with the original grant; on the 25th of May, 1839, juridical possession of the land granted was given in due form of law by the proper magistrate, and the evidence shows, that in 1838, the year succeeding that in which the grant was made, he was in the occupation of the land; that he had at that time on it a house inhabited by his vaqueros or herdsman, and a large stock of cattle and horses, amounting at one time to 1,500 or 2,000 of the former, besides a large number of the latter. This evidence, in my opinion, would be sufficient to constitute a perfect title to the land; but, for the fact which appears on the face of the proceedings, that the land is situated within the ten literal leagues, without any evidence of the approval of the supreme government, whether the want of such approval is sufficient to invalidate the grant and reduce it from a full title to a mere equity, has not yet been decided by the board; and it is not my purpose now to discuss it, but it has been decided by the unanimous concurrence of the commission, that the failure to show it does not affect the equitable right of the party to a confirmation of his claim, where all the other formalities and requisition of the law have been complied with. Such I conceive to have been the case in the present instance, and I cannot bring myself to believe, that this claimant, after a quiet and peaceable enjoyment of his rights under this grant, for a period of now more than fifteen years, would ever have been molested or disturbed in his possession, had the Mexican authority continued to subsist in the country. Entertaining this opinion, I cannot regard the rejection of the claim in any other light than as a decree of forfeiture, unwarranted by the law of nations or the decisions of the Supreme Court, contrary to the principles of equity and the national faith, and in contravention of the true intent, meaning, and spirit of the treaty of Guadalupe Hidalgo.

I therefore think the opinion of the board rejecting the claim was erroneous, and that it ought to be confirmed.

R. AUG. THOMPSON.

Filed in office, Feb'y 14th, 1854.

And it appearing to the satisfaction of this board, that the land hereby adjudicated is situated in the southern district of California, it is hereby ordered, that two transcripts of the proceedings, and of the decisions in the case, and of the papers and evidence upon which the same are founded, be made out, and duly certified by the secretary, one of which transcripts shall be filed with the clerk of the United States district court for the southern district of California, and the other be transmitted to the Attorney General of the United States.

OFFICE OF THE BOARD OF COMMISSIONERS
To ascertain and settle the private land claims in the State of Cal'a.

I, George Fisher, secretary to the Board of Commissioners to ascertain and settle the private land claims in the State of California, do hereby certify the foregoing thirty-four pages, numbered from 1 to 34, both inclusive, to contain a true, correct, and full transcript of the record of the proceedings, and of the decision of the said board, of the documentary evidence and of the testimony of the witnesses upon which the same is founded, on file in this office, in case No. 327, on the docket of the said board, wherein Anastasio Carrillo is the claimant against the United States, for the place known by the name of "Punta de la Concepcion."

In testimony whereof, I hereunto set my hand and affix my private seal (not having a seal of office) at San Francisco, [G. F.] California, this thirtieth day of October, A. D. 1854, and of the independence of the United States of America the seventy-ninth.

GEO. FISHER, *Sec'y.*

UNITED STATES DISTRICT COURT,
Southern district of California.

CLERK'S OFFICE, LOS ANGELES.

I, Charles E. Carr, clerk of the district court of the United States for the southern district of California, do hereby certify that the foregoing thirty-six pages, numbered from 1 to 36, both inclusive, contain a full, true, and correct copy of transcript No. 327, filed in this office, wherein Anastacio Carrillo is appellant, and the United States are appellees, for "Punta de la Concepcion."

In testimony whereof, I have hereunto set my hand and affixed the seal of said court at Los Angeles, this nine- [L. S.] teenth day of January, A. D. 1856, and of the independence of the United States of America the eightieth.

C. E. CARR, *Cl'k.*

DISTRICT COURT OF THE UNITED STATES,
Southern district of California.

CLERK'S OFFICE, LOS ANGELES COUNTY.

ANASTASIO CARRILLO, appellant, vs. THE UNITED STATES, appellee. } Docket No. 118—Transcript No. 327.

Be it remembered, that on the eighth day of November, A. D. 1854, in the district court of the United States for the southern district of California, the following proceedings were had, to wit: a duly certified transcript of the proceedings and decision of the commission to ascertain and settle the private land claims in the State of California, when sitting as a board, in the case wherein Anastasio Carrillo is the claimant against the United States, for the place named "Punta de la Concepcion," was received and filed, and docketed with No. 118, and is as follows, to wit:

LOS ANGELES, *March 8th*, 1855.

In case No. 118, Anastacio Carrillo for "Punta de la Concepcion," the appeal notice from the U. S. Attorney General was filed.

(Vide page 1.)

LOS ANGELES, *Dec'r 26th*, 1854.

In same case the appeal notice by claimant was filed.

(Vide page 1.)

LOS ANGELES, *Dec'r 26th*, 1854.

In the same case, the petition for review on appeal from the U. S. Land Commission was filed.

(Vide pages 2 and 3.)

Upon which petition the following subsequent proceedings were had in their chronological order, to wit:

LOS ANGELES, *Feb'y 24th*, 1855.

In the same case the answer of appellees was filed.

(Vide pages 5 to 8, inclusive.)

LOS ANGELES, *June 13th*, 1855.

In the same case a motion to take further testimony was filed.

(Vide page 9.)

LOS ANGELES, *October 8th*, 1855.

In the same case the deposition of Fernando Tico, a witness in behalf of the claimant, taken before U. S. Commissioner Chas. E. Carr, was filed.

(Vide pages 9, 10, 11 & 12.)

LOS ANGELES, *October 11th*, 1855.

In the same case the deposition of Manuel Jacinto Fogo, a witness in behalf of the appellant, taken before U. S. Commissioner Chas. E. Carr, was filed.

(Vide pages 12, 13, 14 & 15.)

LOS ANGELES, *October 12th*, 1855.

In the same case, a notice of hearing by the United States was filed.

(Vide page 15.)

In the same case the opinion of the court confirming the claim was delivered, and the following decree ordered to be entered.

(Vide pages 16 & 17.)

In the same case the order of appeal to the Supreme Court was filed, Los Angeles, October 20th, 1855.

(Vide page 17.)

Notice of Appeal.

OFFICE OF THE ATTORNEY GENERAL OF THE UNITED STATES,
WASHINGTON, *17th January*, 1855.

ANASTASIO CARRILLO
vs.
THE UNITED STATES. } 327.

You will please take notice, that in the above case, decided by the commissioners to ascertain and settle private land claims in the State of California, in favor of the claimant, and a transcript of the proceedings in which was received in this office on the 28th day of September, 1854, the appeal in the district court of the United States for the southern district of California will be prosecuted by the United States.

(Sgd.) C. CUSHING,
Attorney General.

Filed March 8th, 1855.
(Sgd.) C. E. CARR, *Cl'k.*

Notice of intention to prosecute Appeal.

United States District Court for the southern district of California.

ANASTASIO CARRILLO, appellant,
vs.
THE UNITED STATES, appellees.

Notice of intention to prosecute the appeal from the decision of the Board of United States Land Commissioners.

Anastasio Carrillo, claimant of the rancho called "Punta de la Concepcion," situate in the county of Santa Barbara, in the southern district of California, hereby gives notice of his intention to prosecute an

appeal from the decision of the Board of Commissioners, in his claim for the said land, which claim was presented to the said Board of Commissioners and by them rejected; his claim being that which is numbered on the docket of said Board of Commissioners, No. 327, the transcript whereof, as filed in this office, is numbered No. .

(Sgd.) HALLECK, PEACHY & BILLINGS,
Attorneys for Appellant.

Filed Dec. 26th, 1854.
(Sgd.) C. E. CARR, *Cl'k.*

Petition of Appellant, on appeal from the U. S. Land Commissioners.

United States District Court for the southern district of California.

ANASTASIO CARRILLO, appellant,
vs.
THE UNITED STATES, appellees.

Petition of the appellant, praying the court to review the decision of the U. S. Land Commissioners.

Your petitioner, Anastasio Carrillo, shows unto this honorable court, that on the 13th day of April, 1836, he applied to the proper authority for a grant of the rancho called "Punta de la Concepcion," situate in the then jurisdiction of Santa Barbara, Territory of Upper California, and in the now county of Santa Barbara, State of California; and that on the 10th day of May, 1837, Juan B. Alvarado, governor of California, by virtue of authority in him vested, granted to the petitioner the said tract of land, with the boundaries described in the grant, and in the map which accompanied his petition, and which is referred to as identifying the land intended to be granted; which grant was duly approved by the Deputation on the 18th day of May, 1837, thus making it definitely valid, and a document of final title was duly issued to the petitioner.

Your petitioner further shows, that under the aforesaid title, he immediately entered into the possession of the said land; that he has continued ever since, and now is, in the quiet and peaceful possession and occupation thereof, and that all the conditions of said grant have been faithfully performed.

Your petitioner further shows, that in the month of May, 1839, the local magistrate of Santa Barbara duly surveyed and designated the boundaries of said land, giving to the petitioner the juridical possession thereof, according to the usage and custom of the country.

Your petitioner further shows, that said rancho or tract of land is situate in the southern district of California.

Your petitioner further shows, that on the 7th day of September, 1852, he presented his claim to the said land to the United States land commissioners, appointed under the act of Congress passed on the 3d of March, 1851, entitled "An act to ascertain and settle the private land claims in the State of California," when sitting as a board, and

prayed the said board to confirm it; and that on the 14th day of February, 1854, the said Board of Commissioners decided upon the validity of the petitioner's said claim, and rejected it.

Your petitioner prays, that the transcript of the report of the said Board of Commissioners on the claim presented to them as aforesaid, and of the documentary evidence and testimony of the witnesses on which it was founded, which was filed with the clerk of this court, on the 8th day of November, 1854, as directed by the 12th section of the act of Congress passed on the 31st of August, 1852, entitled "An act making appropriations for the civil and diplomatic expenses of the Government for the year ending the thirtieth of June, 1853, and for other purposes," may be held and considered as part of this petition, and notice of appellant's intention to prosecute appeal was filed with the clerk of this court, Dec. 26th, 1854.

Wherefore your petitioner, appealing from the said decision of the Board of Commissioners, presents this petition to the honorable the district court for the southern district of California, being the district court of the district in which the land is situated, and he prays this honorable court to review the said decision of the said Board of Commissioners, and to decide upon the validity of his claim.

(Sgd.) HALLECK, PEACHY & BILLINGS,
Attorneys for Appellant.

Filed Dec. 26, 1854.
(Sgd.) C. E. CARR, *Cl'k.*

Answer to Appellants' Petition.

In the district court of the United States for the southern District of California.

Los Angeles, *Los Angeles county.*

Anastasio Carrillo, appellant,
vs.
The United States, appellees. } No. 327.

Answer of the appellees to the petition of the appellant praying the court to review the decision of the U. States land commissioners.

The answer of Pacificus Ord, attorney of the United States for the southern district of California, in behalf of the United States, to the petition of Anastasio Carrillo, (filed December 26th, 1854,) alleging that on the 7th day of September, 1852, he presented his claim to the United States land commissioners, appointed under the act of Congress passed on the 3d of March, 1851, entitled "An act to ascertain and settle the private land claims in the State of California," to the rancho or tract of land called "Punta de la Concepcion," situate in the county of Santa Barbara, State of California, with the boundaries described in the grant, and in the map which accompanied his petition, and which is referred to as identifying the land intended to be granted, and prayed the said board to confirm it; and that on the 14th day of Feb-

ruary, 1854, the said Board of Commissioners decided upon the validity of the petitioner's said claim, and rejected it; and praying this honorable court to review the said decision of the said Board of Commissioners, and decide upon the validity of his claim.

And the said attorney, answering said petition in behalf of the United States, denies generally all and singular each and every allegation in the said petition contained; and denies specially "that on the 13th day of April, 1836, he applied to the proper authority for a grant of the rancho called "Punta de la Concepcion," situate in "the then jurisdiction of Santa Barbara, Territory of Upper California, and in the now county of Santa Barbara, State of California; and that on the 10th day of May, 1837, Juan B. Alvarado, governor of California, by virtue of authority in him vested, granted to the petitioner the said tract of land, with the boundaries described in the grant and in the map which accompanied his petition, and which is referred to as identifying the land intended to be granted, which grant was duly approved by the deputation on the 18th day of May, 1837, thus making it definitely valid, and a document of final title issued to the petitioner," as alleged; and he further specially denies, "that under the aforesaid title he immediately entered into the *the* possession of the said land; that he has continued ever since, and now is, in the quiet and peaceful possession and occupation thereof, and that all the conditions of said grant have been faithfully performed," as alleged; and he further specially denies, "that in the month of May, 1839, the local magistrate of Santa Barbara duly surveyed and designated the boundaries of said land, giving to the petitioner the juridical possession thereof, according to the usage and custom of the country," as alleged in said petition.

And the said attorney of the United States, in pursuance of the provisions of the said act of Congress of the 3d of March, 1851, herein fully sets forth the grounds on which the said claim is invalid, to wit:

1st. That the said alleged grant of Juan B. Alvarado, dated the 10th day of May, 1837, was made in violation of the 4th article of the colonization law of Mexico of the 18th of August, A. D. 1824, in this, that the land granted as alleged by claimants was and is within ten leagues of the sea-coast. And there is no evidence shown by said claimant that the supreme general executive power of Mexico previously approved of the colonization of the public lands in Upper California, lying within ten leagues of the sea-coast. And it is denied that the previous consent of said supreme general executive power of Mexico in such case was ever had.

2d. That at the date of the said alleged grant the said land was occupied by and in the possession of the missions of the Territory of Upper California, and particularly by the mission of La Purisima, and could not therefore be colonized.

3d. That the said alleged grant has not the conditions required by, and is not made in entire conformity with, the said law of Mexico of the 18th of August, A. D. 1824, and the regulations for the colonization of the territories of Mexico, of the date of the 21st of November, 1828.

4th. That the said alleged grant of said date is not executed upon the lawful stamped paper.

5th. That the said alleged grant has not the condition required by law, binding the said alleged grantee to cultivate or occupy the said tract of land within a proportionate or limited time, and that in case of the non-performance of said condition the grant to remain void.

6th. That the said alleged grant contains no description of the extent, locality, and boundaries of the said tract of land by which it can be identified and surveyed; and the said alleged grant, and the map referred to therein, are vague and indefinite; and the said alleged grant is void for uncertainty.

7th. That the certificate of Manuel Jimeno, dated the 27th of April, 1839, that the map annexed thereto is a true copy of the original in the office under his charge, is not executed upon the lawful stamped paper. And it is denied that the said map is a true and accurate copy of the original from which it purports to have been copied; and that the said certificate of said Jimeno is sufficient; and that any original of such map ever existed.

8th. That the document shown by the said claimant, in the transcript of the proceedings of the Board of the United States Land Commissioners in said case, purporting to be an act of juridical possession to said claimant of said land, by Antonio Rodriguez, dated the 23d, 24th, 25th, and 26th of May, 1839, is not executed upon the lawful stamped paper; and it is not made according to the said alleged grant, and the map referred to therein, nor according to the said alleged original petition soliciting said land; and it is vague, indefinite, and void.

9th. That the said claimant shows no definitely valid title or grant for said tract of land. And it is denied that he ever had a definitively valid title or grant for said land.

10th. That the said alleged grantee or claimant had no lawful authority to receive, nor had the said Antonio Rodriguez, the said alleged justice of the peace of the presidio of Santa Barbara, lawful authority to give the juridical possession of the said tract of land at said time, except in virtue of a definitive grant or title, which the said claimant did not have at the time of the said alleged juridical act of possession of said land.

11th. That there is no evidence that the said Antonio Rodriguez was an acting justice of the peace of the Presidio of Santa Barbaraon the said 23d, 24th, 25th, and 26th of May, 1839, and that he had at that time lawful authority to perform the said alleged juridical act or acts. And it is denied that the said Antonio Rodriguez was an acting justice of the peace of said place, at said dates, and that he then had lawful authority to perform said alleged juridical act or acts.

12th. That the said claimant fails to show the evidence from the records and minutes, in the archives of the former government of California, referred to and relied upon, in his said petition to said commissioners, and filed, as alleged on the 7th of September, 1852, as aforesaid.

13th. That the said claimant fails to show his alleged original petition, or a duly certified copy thereof, soliciting a grant of the said tract of land; and which petition is referred to in the said alleged grant of said date, and is a substantial part thereof.

14th. That there is no sufficient evidence that the said claimant performed the conditions of the said alleged grant, or the requirements of the law, by building a house on the said tract of land, and inhabiting it, within one year from the date of the said alleged grant, and cultivating the said tract of land.

Wherefore, the premises considered, the said attorney, respondent in behalf of the United States, prays that the said claimant may be served with a copy of this answer; and, that after due proceedings, this honorable court will decide the said claim of said petitioner for said tract of land to be invalid, and to decree costs against him and general relief.

(Sgd.) P. ORD, (*of Monterey county,*)
Attorney of the U. S. for the southern district of California.

Filed Feb'y 24th, 1855.
(Sgd.) C. E. CARR, *Cl'k.*

Motion to take testimony.

In the United States District Court for the southern district of California.

ANASTASIO CARRILLO, appellant,
vs. } No. 118.
THE UNITED STATES, appellee.

Claim for "Punta de la Concepcion."

And now, on the 13th day of June, 1855, the parties appear, the appellant by his attorney, H. W. Halleck, and the appellee, P. Ord, U. S. district attorney for the southern district of California; and on motion of appellant's attorney it is ordered, that either party may take such further testimony as they may wish in the above entitled cause.

Filed June 13th, 1855.
(S'gd) C. E. CARR, *Cl'k.*

Deposition of Fernando Tico, a witness for Appellant.

ANASTASIO CARRILLO, appellant,
vs. } No. 118.
THE UNITED STATES, appellee.

"Punta de la Concepcion."

Deposition of Fernando Tico, a witness on the part of appellant, taken before me, Chas. E. Carr, U. S. commissioner for the southern district of California, at my office in Los Angeles, the 8th day of October, 1855, to be read in evidence on the trial of the cause.

Present: H. W. Halleck, attorney for appellant; P. Ord, U. S. attorney.

Agustus Langenberger was sworn as interpreter.

Fernando Tico being duly sworn, to questions propounded by counsel for the several parties, answers as follows:

Ques. What is your name, age, and place of residence?

Ans. My name is Fernando Tico; my age 57 years; residence San Buenaventura, county of Santa Barbara.

Ques. Do you know the land called Punta de la Concepcion, claimed by Anastasio Carrillo, appellant in this case?

Ans. I do; it is situated in the county of Santa Barbara.

Ques. State, if you know, that the claimant has ever occupied this land; if so, when and in what manner.

Ans. In the year 1837 the son of claimant built a corral on the place, and built a small house of poles; he put on it two manadas and a few cattle; I don't know how many; he also had a small garden on the place. In the beginning of 1838 I was in Santa Barbara, when I saw Anastasio Carrillo, with his sons and servants, pass there with about 200 head of cattle, on their way to this ranch; after this they built on said ranch other houses of adobes.

Ques. When were you last on the ranch, and who was in occupation, and what were the improvements at that time?

Ans. It is two or three years since I was there; Don Anastasio Carrillo was occupying the ranch, with houses, manadas, cattle, and a small piece of land in cultivation.

Cross-examined by U. S. Attorney.

Ques. When were you first on the ranch?

Ans. I think it was about the year 1821.

Ques. When were you there the second time?

Ans. When Anastacio Carrillo founded the ranch.

Ques. What year was that?

Ans. I don't remember; it was probably in 1839 or 1840.

Ques. Who was living on the ranch at that time?

Ans. I think it was a Spaniard by the name of Fogo.

Ques. Where is that Spaniard now living, if alive?

Ans. I think he is living with Mr. Temple, in the county of Los Angeles.

Ques. Whereabouts was Fogo's house at that time, if he had any there?

Ans. It was at the Cojo.

Ques. Describe the place you call Cojo, and where is it.

Ans. Cojo is the name of a cañada at the landing-place.

Ques. What distance is the landing-place from the point called Point Concepcion?

Ans. I do not know.

Ques. Have you been on the point, and do you know its locality?

Ans. I have never been at the point, but I have passed by on the hills.

Ques. Have you ever been within two leagues of that point?

Ans. I think I have been within two leagues of the point, I can't say positively.

Ques. In what direction is the landing-place, Arroyo Cojo, from Point "Conception?"

Ans. It is south of Point "Conception."

Ques. About how far to the south?

Ans. I do not know, I can make no calculation as to the distance; I think it is perhaps less than two leagues.

Ques. Do you know the place called Punta de Pedernales?

Ans. I do not.

Ques. Do you know where the ojo de agua is on the ranch? If so, describe the place.

Ans. I know of no other water on the ranch, but that in Cañada de Cojo.

Ques. Do you know the names of any other cañadas on said ranch? if yea, state their names.

Ans. I do not.

Ques. The second time you were there, when you saw the Spaniard, Fogo, how many cattle were on the ranch, if any?

Ans. I think there were over 300 head.

Ques. Whose were they?

Ans. They belonged to Don Anastasio Carrillo.

Ques. Were you on the rancho at any time, or times, afterwards? if yea, when, and who lived there, if any one?

Ans. I was there two or three years ago, and Luis Carrillo, a son of Don Anastasio, was living there.

Ques. Do you know when Fogo left the ranch permanently?

Ans. I do not.

Ques. Do you know when the rancho was abandoned by Carrillo, after Fogo left?

Ans. I never heard that Carrillo had abandoned the rancho.

(Sg'd) FERNANDO TICO.

Sworn to and subscribed before me, this 8th of October, 1855.

(Sg'd) C. E. CARR, *Cl'k.*

Filed Oct'r 8th, 1855.

(Sg'd) C. E. CARR, *Cl'k.*

Deposition of Manuel Jacinto Fogo, a witness for Appellant.

THE UNITED STATES, appellees, ads. ANASTASIO CARRILLO, appellant. } No. 118.

Deposition of Manuel Jacinto Fogo, a witness for appellant in the above case, taken before me, Charles E. Carr, U. S. commissioner for the southern district of California, at Los Angeles, this 11th day of October, 1855, to be read in evidence on the trial of said cause.

Present: H. W. Halleck, counsel for appellant; P. Ord, U. S. Att'y. Wm. G. Dryden was sworn as interpreter.

Manuel Jacinto Fogo, being duly sworn, to questions propounded by counsel answers as follows:

Ques. What is your name, age, and place of residence?

Ans. My name is Manuel Jacinto Fogo; my age is fifty-five years; I reside here in Los Angeles.

Ques. Do you know the land called Punta de la Concepcion, claimed by Anastasio Carrillo; if so, where is it situated?

Ans. I do; it is situated in the county of Santa Barbara.

Ques. State what you know personally of the occupation of this land; the time, manner, and by whom occupied.

Ans. In the year 1837 it was occupied with cattle and horses upon account of Raymundo Carrillo, who was there by the orders of his father, Anastasio Carrillo. It has been thus occupied up to the present time.

Ques. Did you ever live upon said rancho; if so, when, and how long?

Ans. I have; I lived on it during five years from the year 1838.

Ques. What time in 1838 did you go to live on the ranch?

Ans. In the beginning of the year 1838.

Ques. Did any body occupy it when you went there to live; if so, who, and in what manner?

Ans. Yes; Luis Carrillo was living there when I went there; in the year I went there Anastasio Carrillo put a large quantity of cattle and horses on the ranch.

Ques. How many cattle and horses were on the ranch when you first went there in 1838, and to whom did they belong?

Ans. There were about two hundred head of cattle and fifty head of horses, and they belonged to Anastasio Carrillo.

Ques. Was there any house on this rancho when you first went there to live; if so, what kind of a house, and who lived in it?

Ans. When I went there, there was a wooden house on the ranch, and Louis Carrillo was living on it.

Ques. In whose employ were you during the five years you lived on the ranch?

Ans. I was in the service of Anastasio Carrillo; I was in charge of the ranch in conjunction with Louis Carrillo.

Ques. How much stock, if any, did Anastasio Carrillo have on the ranch when you left?

Ans. He had seventeen hundred head of cattle, and about two hundred head of horses.

Ques. Was there any portion of land cultivated when you went there, while you lived there, or since, to your knowledge?

Ans. When I went there, a piece of land was cultivated as a garden; during the time I was there the same was continued.

Ques. Who has occupied the ranch since you left?

Ans. Louis Carrillo has occupied it since I left.

Ques. Where did Don Anastasio live during this time?

Ans. He lived in Santa Barbara, always going to see after the ranch, in person.

Ques. Do you know the Arroyo called El Cojo?

Ans. I do.

Ques. How far is it from the mouth of this Arroyo to the Punta de la Concepcion?

Ans. About a mile, more or less.

Ques. Do you know the point called Punta de Pedernales; if so, how far is it from point Concepcion?

Ans. I do; it is about four leagues, more or less, from Punta de la Concepcion.

Ques. Do you know any ojos de agua on this rancho; if so, what are they called?

Ans. I do; one is called the Cojo, another called the Cañada de los Almejars; also, one called Arroyo de las Animas; also, Boca de la Espada. There are others whose names I don't remember.

Ques. Is there any other cañada besides this one you have mentioned; if so, what is it called?

Ans. Yes; Cañada de la Jalama, which last is on the boundary line.

Cross-examined by the U. S. Atty.

Ques. How far is the Cañada de la Jalama from Point Concepcion?

Ans. About a mile and a half, more or less.

Ques. How far is this cañada from the Punta Pedernales?

Ans. Perhaps about four leagues.

Ques. How far is it from where the dwelling-houses on the ranch were, in 1838, to Point Concepcion?

Ans. Near about a mile.

Ques. When were you last on the ranch?

Ans. I think the last time that I was on the ranch was in 1844, when I was at the Punta de Pedernales.

Ques. When were you last at the house on the rancho?

Ans. In the same year 1844, and at the same time.

Ques. Did any body live there at that time?

Ans. Yes; Louis Carrillo was living there at that time; I have not been on the ranch since 1844.

Ques. How do you know that Anastasio Carrillo now occupies the ranch with cattle and horses, as you have not been there since 1844?

Ans. Because I often asked from persons coming from Santa Barbara, and last year, particularly, the sons of Anastasio Carrillo, who came to Los Angeles, if he still occupied the ranch?

Ques. Do you know, of your own knowledge, if the ranch is still occupied by Anastasio Carrillo?

Ans. I know that he occupies it, from hearsay, not of my own knowledge.

Ques. How long have you lived in this country?

Ans. Since 1846.

Re-examined by Counsel for Claimant.

Ques. Who is the father of Luis Carrillo, of whom you have been speaking?

Ans. Anastasio Carrillo.

(Signed) MANUEL JACINGO FOGO. his ⋈ mark.

Sworn to and subscribed by his mark before me, this 11th day of October, 1855.

(Signed) C. E. CARR, *U. S. Com'r.*

Filed October 11th, 1855.

(Signed) C. E. CARR, *Clerk.*

In the District Court of the United States for the southern district of California.

ANASTASIO CARRILLO vs. THE UNITED STATES. } No. 118—(Transcript No. 327.)

Notice of Hearing by U. S.

To Anastacio Carrillo, or his Attorney:

Take notice that the above entitled cause will be brought to a hearing by the United States on Friday, the 19th day of October, A. D. 1855, or as soon thereafter as the same can be heard by the court.

Los Angeles, October 12th, 1855.

(Signed) P. Ord, *U. S. Dist. Att'y.*

Filed October 12th, 1855.

(Signed) C. E. CARR, *Clerk.*
By J. W. ROSS, *Dep.*

ANASTASIO CARRILLO, appellant, vs. THE UNITED STATES, appellees. } No. 118—Punta de la Concepcion.

DISTRICT COURT OF THE UNITED STATES,
Southern district of California.

This cause coming on to be heard at a special term of this court on an appeal from the final decision of the commissioners to ascertain and

settle private land claims in the State of California, under the act of Congress approved March 3d, 1851, upon the transcript of the decision and proceedings, and the papers and evidence on which said decision was founded, and on additional testimony taken in this court: And it appearing that said transcript has been duly filed according to law, and counsel for the respective parties having been heard; it is ordered, adjudged, and decreed, that the decision of the said commissioners be, and the same is hereby, reversed and annulled. And it is ordered, adjudged, and decreed, that the claim of the said appellant, Anastasio Carrillo, is a good and valid claim to the place known by the name of Punta de la Concepcion. And it is further ordered, adjudged, and decreed, that the same be, and is hereby, confirmed to the said appellant. The land of which confirmation is hereby made, is described in the map, and with the boundaries, as set out in the act of juridical possession, to wit: Commencing at the sea-shore, in which place a stake was driven as a bound, and having measured three-quarters of a league, it ended in the high part of the Sierra, where some high oak trees, those which are most visible in the said place, which served as a bound; thence northwest drawing the cordel along over a ridge named that of Jalama, which serves to divide the place at present being measured, from that of San Julian, the measurement reaching to the place named Punta de Pedernales, which measurement was five leagues in length, where a stake was placed as a bound.

(Signed) ISAAC S. K. OGIER,
United States District Judge for the southern district of California.

Order of Appeal to the Supreme Court, on motion of P. Ord, U. S. Attorney.

In the District Court of the United States for the southern district of California.—Special term, Los Angeles, September, 1855.

ANASTASIO CARRILLO vs. THE UNITED STATES. } No. 118—(Transcript No. 327, on Appeal from U. S. Land Commissioners.)

On motion of P. Ord, attorney of the United States for the southern district of California, it is ordered by the court, that an appeal be granted the United States, from the judgment of this court against the United States in the above entitled cause, rendered on or about the 20th day of October, A. D. 1855.

(Signed) P. ORD, *U. S. Dist. Att'y.*

Filed October 20th, 1855.

(Signed) C. E. CARR, *Clerk.*

UNITED STATES DISTRICT COURT,
Southern district of California.
CLERK'S OFFICE, LOS ANGELES.

I, Charles E. Carr, clerk of the district court of the United States for the southern district of California, do hereby certify the foregoing